REMARKS/ARGUMENTS

Claims 1 – 6 and 9 are currently canceled and claims 7, 8, and 10 – 13 are pending. Claims 7 and 8 are currently amended. Support for the amendment can be found in paragraphs [0028], [0035], [0042], and Table 1. Claims 10 – 13 are newly added claims that incorporate the subject matter removed from claims 7 and 8 and canceled claim 9. Therefore, no new matter has been added to the claims.

This communication is responsive to the Final Office Action with a mailing date of August 16, 2007. The Examiner rejected claims 7 – 9 under 35 U.S.C. § 103. Applicants respectfully traverse the Examiner's rejections and requests reconsideration and withdrawal of the rejections based on the following remarks.

Rejection of claims 7 – 9 under 35 U.S.C. § 103

The Examiner rejects claims 7-9 under 35 U.S.C. § 103(a) as being unpatentable over Iwamoto et al (US Patent 6,316,042) in view of Takami et al (US Patent 6,436,462), Kozai et al (JP 2001-17099), Kishida et al (JP 9-163943), Numata et al (JP2000-166491), Takami et al (JP 9-322725), and applicants admission of the prior art and Nakamura et al (US Patent 6,045,847)., further in view of Monte (US Patent 3,914,524), Gebert et al (US Patent 6,063,402), Morningstar (US Patent 3,294,523)

In order to determine whether a claimed invention is unpatentable under 35 U.S.C. § 103,

the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Graham v. John Deere Co., 383 U.S. 1, 17 (1966).

When applying 35 U.S.C. §103, the following tenets of patent law must be adhered to:

The claimed invention must be considered as a whole;
The references must be considered as a whole;
The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
Reasonable expectation of success is the standard with which obviousness is determined.

See, e.g., Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

The prior art references relied upon by the Examiner do not support a rejection under 35 U.S.C. § 103. In independent claim 7, Applicants' claim cooked rice superior in low temperature tolerance containing water-soluble soybean polysaccharides, erythritol, and amylase selected from β-amylase and glucoamylase, wherein the texture and taste of the rice upon completion of cooking is preserved when stored in low temperature refrigeration or freezing temperatures for a period of at least four days. The references fail to disclose all of the elements of Applicants' invention and fail to suggest any combination or modification of their teachings.

With respect to the scope and content of the prior art references relied upon by the Examiner, none of the prior art references cited by the Examiner teaches the combination of water-soluble soybean polysaccharides, erythritol, and amylase selected from β-amylase and glucoamylase. In addition, none of the references teaches a cooked rice product that is able to maintain very good taste and texture, using the quality of the product immediately after cooking as a reference, during low temperature storage for at least four days. The Examiner asserts that

the art taken as a whole discloses that trehalose and erythritol are sugar alcohols; however, trehalose is not a sugar alcohol. Trehalose is a sugar, a disaccharide, and a person of ordinary skill in the art would recognize that trehalose is not classified as a sugar alcohol. Also, as previously noted, Applicants have included a comparative example of a rice product produced according to Iwamoto. In the present application, Comparative Example 6 is a cooked rice product produced according to the disclosure of Iwamoto. The rice prepared according to Iwamoto failed to maintain good quality of taste and texture beyond two days. The Examiner also relies on Takami which discourages the use of an enzyme, sugar alcohol, a polysaccharide, or a combination of any of the preceding additives because they are unable to maintain the edible quality of the rice after 24-hours in cold storage. (col. 1, lines 21-40).

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

The Examiner asserts that replacing trehalose taught by Iwamoto with erythritol would have obviously resulted in Applicants' invention. Applicants respectfully disagree. A person having ordinary skill in the art of food preservation is aware that trehalose is not a sugar alcohol, and is aware of the differences in sweetness, digestion, and other properties that effect the edible quality of the food product in which it is utilized. It would not be obvious to a person having ordinary skill in the art to substitute trehalose for erythritol to produce a cooked rice product that maintains very good texture and taste after low temperature or frozen storage for at least four days. There is no expectation as to how the introduction of erythritol will affect the taste and other edible qualities of the cooked product after refrigeration or that an extended period of

resistance to retrogradation will occur. Not only do the properties between sugars and sugar alcohols differ, but the properties among various sugar alcohols, such as maltitol, sorbitol, and lactitol, differ as well with respect to edible properties such as taste. The mere fact that sugar alcohols in general exhibit high water retention does not provide any suggestion that sugar alcohols are suitable replacements for sugars or that replacing a disaccharide with a sugar alcohol will provide the unexpected and advantageous results discovered by the Applicants. One of the references relied upon by the Examiner, Takami, teaches that a cooked rice product including any combination of an enzyme, starch, polysaccharide, sugar, sugar alcohol, or emulsifier is difficult to eat after storage in 5° C for only 24 hours. Thus, there no reasonable likelihood of success that including a sugar alcohol instead of a disaccharide in the preparation of a cooked rice product will enhance the low temperature tolerance of the product and preserve the texture and taste. The references taken as a whole would not suggest to a person having ordinary skill in the art at the time the invention was made that Applicants' invention is obvious.

The Examiner also asserts that a "wherein" statement should be the result of statements higher up in the claim. Applicants respectfully disagree. A "wherein" clause can effect the scope of a claim, MPEP 2111.04, and in Applicants' case, the invention is a cooked rice product including the listed components that results in a product that is capable of maintaining taste and texture during low temperature or frozen storage for at least four days. There is no requirement that specific amounts of the ingredients must be listed.

The Examiner asserts that it is not clear what the scope of resisting retrogradation would encompass. Applicants have amended the claims in response to the Examiner's concern. As

mentioned above, claims 7, 8, and 10 – 13 currently include the limitation that the taste and texture of the cooked rice when consumed upon completion of cooking is indistinguishable from the taste and texture of the cooked rice after being stored in low temperatures for a period of at least four days. The claims have also been amended to address the Examiner's rejection of claim 8 for not adding any additional limitation to claim 7. A typographical error in claim 8 incorrectly referred to the storage period as at least four days, but this error has been corrected to be at least six days.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant submits that the claims presented herewith are patentable over the prior art of record and in condition for allowance. Applicant respectfully solicits prompt action thereon. If any questions remain, the Examiner is invited to phone the undersigned attorney.

Respectfully submitted,

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